

CAUTION: The following advice may be based on a rule that has been revised since the opinion was first issued. Consequently, the analysis reflected in the opinion may be outdated.

Hatch Act

Whether a state employee could remain on the state payroll while running for an elected office was contingent upon his or her status under the Hatch Act and was not governed by the State ethics laws.

April 6, 1990
No. 90-I-6

FACT SITUATION

A Field Examiner for the State Board of Accounts wanted to run for an elected position as Clerk-Treasurer while employed by the state, leaving state service on December 31, 1991, and taking office on January 1, 1992.

QUESTION

Is an individual permitted to remain a state (non-merit) employee,

- 1) after filing as a candidate for the elected office for Clerk-Treasurer(March),
- 2) after being nominated in the primary (May), and
- 3) after being elected (November) but before taking the oath of office

January 1?

OPINION

The Commission decided that it did not have jurisdiction over the specific question raised and notified the State Board of Accounts of its opinion.

Whether a state employee can remain on the state payroll while running for an elected office is not a question that can be decided by ethics laws. If the employee is a covered state employee under the Hatch Act, the employee may not be a candidate for an elected office. The office of the Special Council, U.S. Merit System Protection Board, Washington, D. C., has exclusive authority to decide who is covered by the Hatch Act. If a state employee is not covered by the Hatch Act, then the question must be analyzed under state law and the employee's own agency policy.